

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

FELIX PERKINS

PLAINTIFF

V.

NO. 2:08CV156-P-D

COAHOMA COUNTY SHERIFF DEPT, et al.

DEFENDANTS

ORDER

A clerk's entry of default was entered on February 17, 2009, against Defendant Debra Brooks. Defendant Brooks has filed a motion to set aside the entry of default setting forth several arguments.

This civil action was initiated on June 27, 2008. On January 16, 2009, the court granted Defendant Brooks an additional twenty days to file an answer making her answer due on Thursday, February 5, 2009. Defendant filed her answer on Monday, February 9, 2009. On February 17, 2009, Plaintiff filed a motion for entry of default citing Defendant Brooks' dilatory answer.

Defendant Brooks maintains that her answer is not untimely or, in the alternative, that the delay was due to inadvertent mistake. Rule 6(h) of Federal Civil Procedure provides a party three additional days to act after a period of time would have otherwise expired when service is made, *inter alia*, by electronic means. *See also* Fed. R. Civ. P 5(b)(2)(E).

As noted *supra*, Defendant Brooks' answer was due on Thursday, February 5, 2009. Given the additional three days in accordance with Rule 6(h), the answer would not be untimely if filed on February 8, 2009, which was a Sunday. Since Rule 6(a)(3) excludes weekends and legal holidays from the computation of time, Brooks timely filed her answer on the following Monday, February 9, 2009.

THEREFORE, Defendant's motion (docket entry 35) is GRANTED. The clerk's entry of default against Defendant Brooks should be SET ASIDE.

THIS the 3rd day of March, 2009.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE